# MALAYSIAN REPORTS

## GOVERNMENT OF MALAYSIA v. ARUMUGAM PILLAI

[O.C.J. (Chang Min Tat J.) November 30, 1973]
[Penang — Civil Suit No. 74 of 1973]

*Income Tax — Performance of executive duties — Whether taxing ultra vires the Constitution — Income Tax Act, 1967, s. 106(3).*

The plaintiff applied for leave to enter summary judgment in a suit for income and additional taxes on notices duly made under the Income Tax Act, 1967. The defendant objected to the application on the ground that the action was *ultra vires* the Constitution.

**Held:** income tax is deprivation of property in accordance with the law, or that the Income Tax Act was duly enacted. Taxing cannot therefore be *ultra vires* the Constitution.

*Cases referred to:-*

(1) *Government of Malaysia* v. *D.C.* [1973] 1 M.L.J. 161.
(2) *Comptroller-General of Inland Revenue* v. *N.P.* [1973] 1 M.L.J. 165.
(3) *Sun Man Tobacco Co. Ltd.* v. *Government of Malaysia* [1973] 1 M.L.J. 163.
(4) *Tinsa Maw Naing* v. *The Commissioner of Police Rangoon & Anor.* [1950] Burmah Law Reports 17.

CIVIL SUIT.

*Ng Kam Seng* (Assessment Officer, Inland Revenue) for the plaintiff.

*K. Chandra* for the defendant.

**Chang Min Tat J.:** This was an application under O.14 Rules of the Supreme Court to sign final judgment for a considerable sum due to Government for income tax and additional income tax raised on the defendant tax-payer, in respect of which notices of assessment and demands for payment had been duly made.

The application was first set for hearing on 26 October 1973 but was disposed of only on 23 November. In Chambers, I dismissed the objections, holding that in respect of such objections, even if I now reneged from my previous judgments in *Government of Malaysia* v. *D.C.*[1] and *Comptroller-General of Inland Revenue* v. *N.P.*,[2] I would nevertheless be bound by the decision of the Federal Court in *Sun Man Tobacco Co. Ltd.* v. *Government of Malaysia*,[3] which upheld the view that by the operation of section 106(3) Income Tax Act 1967, the court, to put it bluntly, had only one function to perform, and that was to give judgment to Government. I had not come to this view myself without a hard mental struggle and it was a comfort to have the authority of the Federal Court.

Mr. K. Chandra who appeared for the tax-payer conceded that in respect of the objections in the defence of incorrect assessment or premature assessment, I was bound by *Sun Man's* case but contended that there was now raised a constitutional issue. The relevant defence was in paragraph 10 that —

"The action of the plaintiff is inconsistent with Article 13(1) of the Constitution of Malaysia and (sic) further avers that the plaintiff has been acting under executive powers and as such the proceedings by the plaintiff is *ultra vires* the Constitution of Malaysia."

Now Article 13(1) of the Constitution provides that —

"13(1). No person shall be deprived of property save in accordance with law."

I had however in a previous judgment followed the decision of the Supreme Court of Burma in *Tinsa Maw Naing* v. *The Commissioner of Police Rangoon and Anor.*[4] on the construction of "in accordance with law" and held that "when the Constitution speaks of law, it speaks of the will of the Legislature enacted in due form, provided that such enactment is within the competence of the Legislature." In my view, then and now, there can be no doubt that income tax is deprivation of property in accordance with law, or that the Income Tax Act 1967 was duly enacted. Taxing cannot therefore be said to be inconsistent with the Constitution.

The second limb of the objection in the form in which it was taken seemed to me, with respect, to be attacking something that was impregnable. Where the executive is entrusted with powers conferred on it by enactments duly passed by Parliament, it has to perform executive duties in accordance with its function of governing, and that would mean to exercise the "executive powers," conferred on it. Taxing cannot therefore be *ultra vires* the Constitution so long as it is in accordance with law.

It appears, with respect, that basically to attack the assessment in this way is to say that the assessment was "excessive, incorrectly assessed, under appeal or incorrectly increased" and that would be caught by section 106(3) of the Act.

For these reasons, I therefore dismissed the objection and acceded to the application to sign final judgment.

Then, when learned counsel for the tax-payer applied for further arguments in open court, my first reaction, let me confess, was to say I did not require any further arguments. But I thought that I would not deprive myself of the pleasure of hearing counsel, however, still wondering what further arguments there could be.

This morning, however, an officer for Revenue applied for an adjournment for 2 weeks on the ground that no law officer from the department was free to argue this case. That would take me to the day before I go on long leave.

On consideration, I decided to refuse the application for an adjournment and without intending any discourtesy whatsoever, to counsel, I also decided to dispense with further arguments and to certify that I would not require any. The tax-payer can now take the matter to the Federal Court where it must eventually go, whatever my decision. My action has therefore the decided advantage of advancing the hearing on appeal by some not inconsiderable time, which perhaps even the tax-payer would appreciate since the sooner this very worrying issue is decided, the happier would be his frame of mind.

*Order accordingly.*

Solicitors: *Datuk S. P. Seenivasagam & Co.*